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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,678	01/27/2004	Younger Ahluwalia	03137.000007	3037

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NEW YORK, NY 10112

EXAMINER
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RUDDOCK, ULA CORINNA

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10766,678

Applicant(s)

AHLUWALIA ET AL.

Examiner

Ula C. Ruddock

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/20/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement (IDS) submitted on September 20, 2004, has been considered by the examiner.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27 of U.S. Patent No. 6,872,440. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are obvious variants over one another.
5. Claims 1-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6,858,550. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are obvious variants over one another.

6. Claims 1-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of U.S. Patent No. 6,586,353. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are obvious variants over one another.

7. Claims 1-17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of copending Application No. 10/354,216. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are obvious variants over one another.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claims 1-17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of copending Application No. 10/354,220. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are obvious variants over one another.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Claims 1-17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/766649. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are obvious variants over one another.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. Claims 1-17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of copending Application No. 10/766652. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are obvious variants over one another.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. Claims 1-17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 10/766654. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are obvious variants over one another.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

12. Claims 1-17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of copending Application No. 10/354219. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are obvious variants over one another.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0391000 (EP '039) in view of Ahluwalia (US 5,965,257). EP '039 disclose a flexible fabric useful for bedroom articles such as mattress and pillow ticking and mattress and pillow covers (page 4, In 45-50). The fabric comprises fiberglass and is coated onto one surface of the fiberglass substrate (page 3, In 42-43). The coating comprises a catalyst which cause the compound to swell (page 3, In 45-49). The Examiner is equating this catalyst to Applicant's gel catalyst. The composition may also comprises binders, such as acrylic latex (Example 1) and fillers such as hydrated clay (page 3, In 55-57). The compound reacts and swells to form a char which closes the pores of the compound itself and fills the pores or interstices between the yarns (page 4, In 18-20). With regard to Applicant's disclosure of a metallic component, EP 391 disclose an aluminum reflective paint coating on the barrier fabric (page 4, In 26-34). EP '391 discloses the claimed invention except for the teaching that the fabric coating contains a surfactant or surfactant generated microcells. EP '391 also fails to disclose a water repellent material, an anti-fungal material, an antibacterial material, a surface friction agent, an algacide, and a dye.

Ahluwalia (US 5,965,257) discloses coated structural articles comprising a substrate wherein the coating consists essentially of a filler material and a binder material (abstract). The

substrate comprises glass fibers (col 2, ln 11-13). The binder comprises an acrylic latex, specifically Hycar 2679 (col 3, ln 5-9). It should be noted that Hycar 2679 polymer emulsion contains synthetic soap, sometimes known as surface active agents or surfactants (col 7, ln 16-19), thus meeting Applicant's limitation of a surfactant component. Furthermore, because a surfactant is present in Ahluwalia's composition, surfactant-generated microcells would also be present in the material. The articles are planar and coated on one or both sides (col 3, ln 42-44). The structural article may be coated with a water repellent material, an algacide, an antifungal material, an antibacterial material, a surface friction agent, a flame retardant material, and/or a coloring dye (col 3, ln 52-67 to col 4, ln 1-14).

It would have been obvious to one having ordinary skill in the art to have used Ahluwalia's specific Hycar 2679 polymer latex that contains a surfactant, in the composition of EP '391, motivated by the desire to create a coating that is compatible with a wide variety of fillers. Because the composition of Ahluwalia and EP '391 contains a surfactant, surfactant-generated microcells would also be present in the material. Finally, it would have been obvious to have used Ahluwalia's water repellent material, anti-fungal material, antibacterial material, surface friction agent, algacide, and dye on the glass fibrous product of EP '391, motivated by the desire to create a colored fibrous product having resistance to water, algae, fungus, bacteria and to improve the surface friction of the product.

15. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horner, Jr. et al. (US 6,365,533) in view of Fidler et al. (US 6,136,216) and Ahluwalia (US 5,965,257). Horner, Jr. et al. disclose a pliable facer comprising a preformed glass mat, a binder, and a coating

comprising fillers, surfactant, and flame retarding additives (abstract). Because a surfactant is present in Horner's composition, surfactant-generated microcells would also be present in the material. Fillers useful in the coating composition comprise clay (col 3, ln 44-45), which Applicant discloses as a preferred filler in the present specification. The coating composition further comprises surfactants including fatty acids (col 3, ln 50-57), which are disclosed by Applicant in the specification. The latex component of the coating composition includes latex polymers including copolymers of styrene and butadiene and acrylic based resins (col 3, ln 58-61), which are preferred binders disclosed in the present specification. The coating composition also comprises a coloring agent (i.e. dye) (col 5, ln 28). Regarding Applicant's disclosure of a metallic component adhered to the coated substrate, Horner et al. disclose an aluminum foil facer sheet that can be on the first or second side (col 6, ln 3-10). Horner et al. disclose the claimed invention except for the teaching of a gel catalyst component and that the composite material further requires water repellant material, antifungal material, antibacterial material, a surface friction agent, and an algicide.

Fidler et al. (US 6,136,216) disclose insulative compositions that can be made in sheets, or loose fill (abstract). The composition comprises fiberglass (col 7, ln 1-3), acrylic latex binder (col 6, ln 45-50), a surfactant such as sodium lauryl sulfate (col 6, ln 11-17) and a clay filler (col 6, ln 51-61). Because a surfactant is present in Fidler's composition, surfactant-generated microcells would also be present in the material. A preferred additive in Fidler's composition is a gelatin crosslinker (col 6, ln 23-26), which the Examiner is equating to Applicant's gel catalyst. Fidler's gelatin crosslinker makes the composition more durable and allows it to be dried at a higher amount.



Ahluwalia (US 5,965,257) discloses coated structural articles comprising a glass fiber substrate wherein the coating consists of a latex (col 3, ln 5-9) and a filler (col 2, ln 20). The structural article may be coated with a water repellent material, an antifungal material, an antibacterial material, a surface friction agent, and an algaecide (col 3, ln 52-67 to col 4, ln 1-14).

It would have been obvious to one having ordinary skill in the art to have used Fidler's gelatin crosslinker (i.e. gel catalyst) and Ahluwalia's water repellent material, antifungal material, antibacterial material, surface friction agent and algaecide on the glass mat of Horner, Jr. et al., motivated by the desire to create a fibrous product having resistance to water, fungus, algae, bacteria, and to improve the surface friction of the product and to make the composition more durable.

### ***Conclusion***

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

UCR

*UCR*

*Ula Ruddock*  
**Ula C. Ruddock**  
Primary Examiner  
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